

I D E A



"Children with disabilities should be learning the same things as nondisabled children...living a full life, raising families, being a part of their community."

Thomas Hehir

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The Six Principles of the Law



- Free appropriate public education
- Appropriate evaluation
- Individualized education program
- Least restrictive environment
- Parent and student participation in decision making
- Procedural due process

Free Appropriate Public Education



"The term '*free appropriate public education*' means special education and related services that -

"(A) have been at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

Free Appropriate Public Education (cont...)

- (C) include an appropriate preschool, elementary, or secondary school education in the state involved; &
- (D) are provided in conformity with the individualized education program required under section 614(d)."



[Section 602(8)] e

Free Appropriate Public Education



- Free - at no cost to the parents
- Appropriate - suited to the individual needs of the child
- Public - provided by, or paid for by, the public school system
- Education (including extracurricular activities) - what this law is all about

Appropriate Evaluation

One of the most significant changes in IDEA 97 relates to how the evaluation process should be viewed. "The committee believes that a child should not be subjected to unnecessary tests and assessments...and the LEA should not be saddled with associated expenses unnecessarily."



(Report Language, p. 19)

Evaluation activities should include gathering information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities. e

Appropriate Evaluation



- Evaluators must be knowledgeable and trained
- A variety of instruments and procedures must be used to gather information about the student.
- Tests and other procedures must be selected and administered so as not to be discriminatory on a racial or cultural basis.

Individualized Education Program



The term '*individualized education program*' or '*IEP*' means a written statement for each child with a disability, that is developed, reviewed and revised in accordance with section 614(d).

Least Restrictive Environment



...the presumption that children with disabilities are most appropriately educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily e

Parent and Student Participation in Decision Making



"The congress finds the following:

...over 20 years of research and experience [have] demonstrated that the education of children with disabilities can be made more effective by -

...strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home."

[IDEA 97, Findings of Congress, Section 601©(5)(B)]

Ways in Which Parents Participate

- Giving consent for evaluation and initial placement of their child
- Helping design the IEP
- Helping the school understand their child



Ways in Which Students Can Participate

- Helping design the IEP
- Expressing preferences and interests, particularly during transition planning

Some Procedural Safeguards



- Parent notification
- Parent consent
- Parent access to educational records
- Due process hearings, including disclosure of evaluation results and recommendations
- Opportunity to present due process complaints
- Mediation

Early Intervention Amendments

- Early intervention services for 0-3 year olds, provided in a natural environment
- Continuity of services and programs:
 - An IFSP can act (under certain conditions) as an IEP when entering preschool programs.
 - LEA must attend transition planning meeting
- Personnel standards and use of paraprofessionals similar to requirements under Part B



Definition of a “Child with a Disability”

IDEA 97 defines a “**child with a disability**” as a child with:

- Mental retardation
- Hearing impairments (including deafness)
- Speech or language impairments
- Visual impairment (including blindness)
- Serious emotional disturbance (hereafter referred to as ‘emotional disturbance’)
- Orthopedic impairments
- Traumatic brain injury
- Other health impairments
- Specific learning disabilities



AND who, because of this disability, needs special education and related services e

Special Education Disabilities Categories (Labels)

IDEA'S Definition of Disabilities

Autism

Mental retardation

Blind-Deaf

Traumatic Brain Injury

Orthopedic Impairment
Impairment(POHI)

Other Health Impairment

Deafness

Hearing Impaired

Speech and Language Impaired

Specific Learning Disability

Visually Impaired

Multiple Disabilities



Michigan's Definitions of Disabilities

Autism (AI)

Educable Mental Impairment (EMI)

Trainable Mental Impairment(TMI)

Severe Mental Impairment (SMI)

Physical/Other Health

Preprimary Impairment (PPI)

Hearing Impairment (HI)

Speech & Language Impairment (SLI)

Learning Disabilities (LD)

Visual Impairment (VI)

Severe Multiple Impairments

Definition of a Child with a Disability

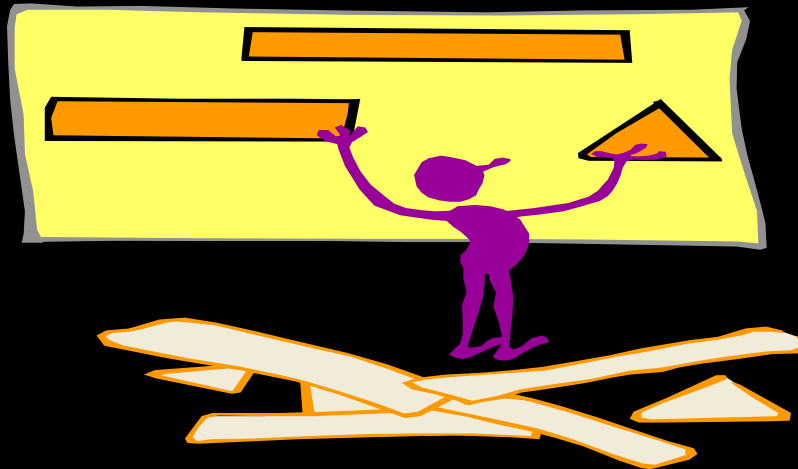
Amending the age Range for "Developmental Delay"

At the discretion of the State and the LEA, a "child with a disability" aged 3 through 9 may include a child experiencing developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development or adaptive development;

and who, by reason thereof, needs special education and related services

Major Changes in Evaluation

- LEAs must notify parents of any evaluation or reevaluation they plan, and obtain informed parental consent **before** the evaluation is conducted.



- A variety of tools and strategies must be used to gather relevant functional and developmental information about the child. This includes information provided by the parent.

Major Changes in Evaluation (cont.)

- A team of qualified professionals AND the parents decide if the child is a "child with a disability."
- A child who has received a lack of instruction in math or reading, or who has limited English proficiency, must not be identified as having a disability, if any one of those is the reason for determining the child has a disability.
- Initial evaluation and reevaluation processes look different!
Existing evaluation data may be used.

Determining a Child's LRE

Before IDEA 97 and Under IDEA 97

- Consider the general education classroom first.
- Consider what aids and services would help.

Supplementary aids and services: "Aids, services, and other supports that are provided in regular education classes or other education-related settings, to enable children with disabilities to be educated with non disabled children to the maximum extent appropriate, in accordance with LRE."

Determining a Child's LRE (cont.)

- If the student can be satisfactorily in the general education classroom, with aids and services, then that's the student's LRE.
- If not, consider alternative placements:
 - instruction in regular classes
 - special classes
 - home instruction
 - instruction in hospitals and institutions e



Definition of "Parent"

Parent, as defined in IDEA 97, includes:

(A) A legal guardian



(B) An individual assigned as surrogate parent

- The surrogate parent may not be an employee of the State educational agency, the local educational agency or any other agency that is involved in the education of the child or providing early intervention services.
- The surrogate parent may not be the child welfare worker whether from a private or public agency
- The surrogate parent may be the foster parent

Parent's Participation in their Child's Education: New Rights

- *Input during evaluation:* Parents are entitled to provide information about their child during their child's evaluation. Parents, as members of their child's IEP team, and other professionals as appropriate, review existing evaluation data as part of an initial evaluation (if appropriate) and as part of any reevaluation of their child.
- *Eligibility:* Parents are entitled to be part of the group that makes the decision regarding their child's eligibility.
- *Placement:* Parents are entitled to be part of the group that makes the decision regarding their child's educational placement.



New Rights (cont..)

- *Reevaluation:* Parents need to provide informed consent in order for their child to be reevaluated
- *Participation in all meetings:* Parents now have the express right to participate in all meetings with respect to the evaluation, identification and educational placement of their child, and the provision of FAPE to their child.
- *Receiving progress reports and revising the IEP:* Parents have the right to receive regular reports on their child's progress. The IEP would need to be revised to address any lack of progress toward annual goals.



New Rights (cont..)

- *Notification to the public agency by parents regarding parental placement of their children in private school:* Parents must now notify the public agency if they intend to remove their child from the public school and place him or her in a private school at public expense.
- *Notification by parents (or the attorney representing the child) of their intent to file a due process complaint:* If parents intend to request a due process hearing, they must notify the SEA or the LEA as the case may be, and they must provide certain information

"Stay-Put" Provision

Prior to IDEA 97



“During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

"Stay-Put" Provision

Under IDEA 97



"Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child..."

Section 615(j)

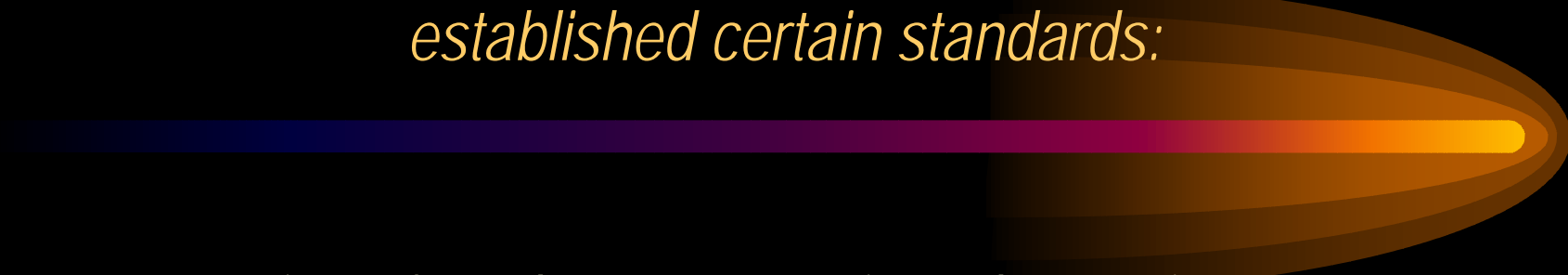
The History of "Stay-Put"

The EHA, when originally passed in 1975, contained the provision that when there is a dispute about the child's placement, the child was to stay in the current educational placement until the dispute was resolved.

Schools could use their "normal procedures for dealing with children who were endangering themselves or others" [34 CFR 300.513], including temporary suspension for up to 10 school days.

The History of "Stay-Put" (cont..)

Various court cases and the law's requirements have established certain standards:



- Expulsion of 10 days or more is a change in placement and triggers procedural safeguard protections of the law. (*Stuart v. Nappi, 1978*)
- If discipline of more than 10 days is considered, parents must be given notice.

The History of "Stay-Put" (cont..)

- The IEP team needs to consider the relationship between the misconduct and the student's disability.

(S-1 v. Turlington, 1981) The Office of Civil Rights referred to this as a "manifestation determination."

- The IEP team decides that there is no relationship between the misconduct and the child's disability, the school could apply its normal disciplinary procedures, including expulsion. However, it could not stop educational services while the child was expelled.

(S-1 v. Turlington, 1981)

Honig v. Doe

- Addressed the question of whether there were exceptions to “stay put” for children with disabilities who were considered dangerous.
- Supreme Court ruled that schools’ recourse to “stay put” was to demonstrate in court that “maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others.” (*Honig v. Doe*, 1988)
- If the school could demonstrate this, a court could order that the child be placed elsewhere and not returned to the the then-current placement.

Placement in Alternative Educational Settings

Section 615(k)'s 10 subparagraphs:

- (1) Authority of school personnel
- (2) Authority of hearing officer
- (3) Determination of setting
- (4) Manifestation determination review
- (5) Determination that behavior was not manifestation of disability



Placement in Alternative Educational Settings

cont.



- (6) Parent appeal
- (7) Placement during appeals
- (8) Protections for children not yet eligible for special education and related services
- (9) Referral to action by law enforcement and judicial authorities
- (10) Definitions

Initial Eligibility for Special Education

Referral

- Suspected disability
- Referral to local school
- Child find: School must identify even if no referral



Initial Eligibility for Special Education

Parental Consent:

- To evaluate for eligibility
- Notice of rights and advocacy organizations



Initial Eligibility for Special Education



- Minimum of 2 people
- One person knowledgeable in area of suspected disability
- Complete diagnostic evaluation
- Evaluate for initial eligibility
- Recommend eligibility
- Written report presented to IEP team e

Initial Eligibility for Special Education

Multidisciplinary Evaluation Team (MET)-cont..

- Must include parent input
- Comprehensive evaluation every 3 years to reaffirm elig.
- Special requirement for EI and LD
- More frequent evaluations if parent or teacher request, or if change of placement or other conditions warrant.

IEP Meeting is Held

Timeline for Referral Process

10 calendar days to obtain parental consent

30 school days to have:

- student evaluated
- Multidisciplinary Evaluation (MET)
- IEP meeting held



Note: 30 days can be extended if parents consent. Be careful not to consent to long delay

Procedural Due Process Complaints



A complaint is a written allegation made by any individual that the school or school district has violated, misinterpreted, or misapplied:

- State or federal statutes or regulations related to special education
- State or Intermediate School District (ISD) plan
- The IEP
- Hearing officer decision

Procedural Due Process

When the ISD Receives a Complaint

- Must investigate
- Must have direct contact with person making the complaint
- Within **21 calendar days** after receiving the complaint, provide all involved parties with written report of findings

Student may “stay-put” in program and services during the investigation

Procedural Due Process When Complaint is Valid

- ISD report must describe the corrective actions the school district must take
- Within **10 calendar days** of receiving ISD report, the local school district must advise in writing their position regarding the complaint and corrective action taken.
- Proof of compliance must be filed by school district within **30 calendar days**

Procedural Due Process When Complaint is Invalid

- ISD must send written copy of report to all parties
- Inform person making complaint of right to appeal
- Appeal must be filed within **10 calendar days** of receipt of report

Student may “stay-put” in program and services during appeal to the State Department of Education.

Procedural Due Process

State Level Complaints

- Letter filing state complaint should contain same type of information as letter filing local complaint
- Letter must state request for an investigation
- Department must investigate
- Department must issue report within **30 calendar days** to all parties involved

Procedural Due Process

When State Level Complaint is Valid

- Department will direct agency to take specified corrective action
- Department will require proof of compliance within **30 calendar days** of the date of receipt of the directive
 - i. ISD is responsible to assist school in violation
 - ii. ISD will monitor progress of corrective action
 - iii. ISD will inform Department when corrections are complete
 - iv. Department retains authority to determine acceptability of proof of compliance.

Procedural Due Process



If dissatisfied with the Department's decision, complainant may appeal to U.S. Department of Education if complaint includes alleged violations of IDEA and federal regulations.

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DECISION

The Due Process Hearing



Parents or school may initiate a hearing any time agreement cannot be reached on:

- Identification
- Evaluation (failure to evaluate or provide an IEE)
- Individualized educational program or the proposed educational placement (e.g., vocational program, ESY, LRE/inclusion)
- FAPE (e.g. related services)

The Due Process Hearing



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Student must “stay-put” in program and services during the pendency of any administrative or judicial proceeding unless the parents and the school agree otherwise.

3

The hearing is arranged and/or conducted by the school district of residence.

The Due Process Hearing

4

The hearing must be scheduled *not less than 15 or more than 30 calendar days* following the receipt of the request from the school or parent.

5

The hearing must be held at a time and place mutually convenient for student, parents and school officials.

6

The student who is the subject of the hearing has the right to be present at the hearing.

The Due Process Hearing

7

The student or parents have the right to be accompanied and represented by counsel or an advocate and by individuals with special knowledge or training in the problems of students with disabilities.

8

The parent or advocate has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed *at least 5 days before the hearing* (mutual disclosure of evidence is required of both.) e

The Due Process Hearing



The parent or parent representative has the right to present evidence, confront and cross-examine witnesses. The parent or parent representative may also compel school and other personnel to serve as witnesses.



The parent has the right to have a written verbatim transcript or tape recording of the hearing, including alternative forms, in the parent's native language.

The Due Process Hearing



The parent has the right to have interpreters provided by the school for persons with limited English speaking ability or for the hearing impaired.



Upon request of the parent, the hearing must be open to the public.



The parent has the right to obtain written finding of fact and decisions from the hearing officer.

The Due Process Hearing

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The hearing officer must render a decision *not later than 30 days after the hearing, but in no event later than 45 days after the request for a hearing.*

15

The hearing officer may grant specific time extensions at the request of either party.

16

The hearing officer must be mutually agreed upon; if not, Michigan Department of Education will appoint a hearing officer.

The Due Process Hearing

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Either party may appeal hearing officer's decision.

18

If parents prevail on any significant issue at the hearing, they may recover attorney's fees, in whole or in part (Attorney Fees Law)

19

Hearing officer's decision is binding for one year.

I D E A



"The great power of IDEA is that it brings people with disabilities into the heart of our communities and our schools, where we learn that disability does not divide us, but binds us together."

Senator Bill Frist

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